

PUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

v.

MOHAMED ALI SAID, a/k/a
Mohammed Said, a/k/a Maxamad
Cali Saciid; MOHAMED ABDI JAMA,
a/k/a Mohammed Abdi Jamah;
ABDICASIIS CABAASE; ABDI RAZAQ
ABSHIR OSMAN, a/k/a Abdirasaq
Abshir; MOHAMED FARAH, a/k/a
Mahamed Farraah Hassan,

Defendants-Appellees.

No. 10-4970

Appeal from the United States District Court
for the Eastern District of Virginia, at Norfolk.
Raymond A. Jackson, District Judge.
(2:10-cr-00057-1)

Argued: March 25, 2011

Decided: May 23, 2012

Before KING, DAVIS, and KEENAN, Circuit Judges.

Vacated and remanded by published opinion. Judge King wrote the opinion, in which Judge Davis and Judge Keenan joined.

COUNSEL

ARGUED: Benjamin L. Hatch, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellant. Jeremy C. Kamens, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Alexandria, Virginia, for Appellees. **ON BRIEF:** Neil H. MacBride, United States Attorney, Alexandria, Virginia, Joseph E. DePadilla, Raymond E. Patricco, Jr., Assistant United States Attorneys, OFFICE OF THE UNITED STATES ATTORNEY, Norfolk, Virginia; Virginia Vander Jagt, Jerome Teresinski, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellant. Michael S. Nachmanoff, Federal Public Defender, Jeffrey C. Corey, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Alexandria, Virginia, Keith Loren Kimball, Assistant Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Norfolk, Virginia, for Appellee Mohamed Ali Said; Robert B. Rigney, PROTOGYROU & RIGNEY, PLC, Norfolk, Virginia, for Appellee Mohamed Abdi Jama; Bruce C. Sams, Norfolk, Virginia, for Appellee Abdicasiis Cabaase; Trey R. Kelleter, VANDEVENTER BLACK, LLP, Norfolk, Virginia, for Appellee Abdi Razaq Abshir Osman; David M. Good, DAVID MICHAEL GOOD, PC, Virginia Beach, Virginia, for Appellee Mohamed Farah.

OPINION

KING, Circuit Judge:

The government appeals from the district court's published opinion and order of August 17, 2010, granting the joint pre-trial motion of the five defendants-appellees — Mohamed Ali Said, Mohamed Abdi Jama, Abdicasiis Cabaase, Abdi Razaq Abshir Osman, and Mohamed Farah — to dismiss the 18 U.S.C. § 1651 piracy count from the eight-count superseding indictment brought against them. *See United States v. Said*,

757 F. Supp. 2d 554 (E.D. Va. 2010).¹ The defendants were charged with piracy under § 1651 for attacking, but not seizing or otherwise robbing, a United States Navy ship. *See id.* at 556-57 (describing indictment's allegations that, around 5:00 a.m. on April 10, 2010, defendants fired at least one shot on USS Ashland from skiff in Gulf of Aden). The district court's ruling dismissed the piracy count from the indictment, pursuant to Federal Rule of Criminal Procedure 12, because no taking of property was alleged. *Id.* at 556.

We heard oral argument in the government's interlocutory appeal from the *Said* opinion on March 25, 2011, and that same day ordered the parties to file supplemental briefs addressing the legal propriety of the procedure employed by the district court to dismiss the piracy count from the indictment. Thereafter, on April 20, 2011, we placed this appeal in abeyance pending our decision in *United States v. Dire*, No. 11-4310(L), ___ F.3d ___ (4th Cir. 2012), which we issue today in tandem with this opinion.² We hereby remove this appeal from abeyance, vacate the district court's *Said* opinion, and remand for such other and further proceedings as may be appropriate, consistent with our decision in *Dire*.

VACATED AND REMANDED

¹The government has not appealed the dismissal of the piracy count as to the sixth defendant charged in the indictment, Jama Idle Ibrahim.

²Notably, counsel for the defendants in this appeal submitted an amicus curiae brief in support of the appeals of the *Dire* defendants.